

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
AVERY E. JORDAN and) Bankruptcy Case No. 94-31162
LILLY ELIZABETH JORDAN,)
)
Debtors.)

OPINION

This matter having come before the Court on Trustee's Objection to Claimed Exemption; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Court finds that the material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On October 12, 1993, the Debtors conveyed, by general warranty deed, certain real estate located in the County of Cape Girardeau, State of Missouri, to their son and daughter-in-law in fee simple.

2. Prior to the conveyance of the real estate, the Debtors had occupied said real estate as their homestead.

3. On October 19, 1993, an Agreement was entered into between the Debtors and their son, David L. Jordan, and his wife, Sandra J. Jordan, in which it was agreed that the sum of \$21,200 would be paid with no interest in monthly installments until paid in full. Said sum was payment for the transfer of the real estate in question.

4. The Debtors subsequently moved to Illinois following October 19, 1993, and began renting a home in Westfield, Illinois, which is their current residence. On October 27, 1994, the Debtors filed for relief under Chapter 7 of the Bankruptcy Code and claimed, under Schedule C of their bankruptcy petition, a homestead exemption in the amount of \$15,000 on proceeds remaining to be paid by their son under the October 19, 1993, Agreement for the Debtors' former homestead.

5. On January 3, 1995, the Trustee filed his Objection to the claimed exemption on the basis that Missouri homestead exemption law should apply and that the Debtors had abandoned their former residence. In the alternative, the Trustee stated that, under Illinois law, the stream of payments from the Agreement between the Debtors and their son for payment of their former homestead exemption should not be insulated indefinitely from Debtors' creditors.

Conclusions of Law

The Court first addresses the issue of whether Missouri homestead law or Illinois homestead law should apply to this situation and finds that, given the fact that the Debtors now reside in the State of Illinois, have filed their bankruptcy in the State of Illinois, and are receiving payment for their former homestead in the State of Illinois, that Illinois law should apply and that the Illinois homestead exemption is the applicable exemption to apply. See: In re Calhoun, 47 B.R. 119 (E.D. Va. 1985), and In re Wilson, 62 B.R. 43 (E.D. Tenn. 1985).

Having found that Illinois homestead exemption law applies to the facts at bar, the Court would note that the Debtors' claim an exemption in the proceeds of sale of their former homestead pursuant to 735 ILCS

5/12-906. It is the Debtors' contention that they are investing the stream of payments from the Agreement between themselves and their son and daughter-in-law in their new homestead in that virtually all of the money received on a monthly basis from the Agreement goes to pay the lease on their present residence. As such, the Debtors argue that they are reinvesting the proceeds from the sale of their former homestead and that, under paragraph 12-906, the proceeds so reinvested should be entitled to the same exemption as the original homestead was. In examining paragraph 12-906 concerning proceeds of sale of a homestead, the Court finds that paragraph 12-906 exempts proceeds of a sale in two ways. One, any proceeds from the sale are exempt for a full year after the receipt thereof; and, two, proceeds of the sale are also exempt if they are reinvested in a homestead within a reasonable time following their receipt. Given that it has been more than a year since the date upon which the Debtors sold their homestead, the Debtors must rely on the provision of paragraph 12-906 exempting proceeds of sale which are reinvested in another homestead. Thus, the issue becomes whether the proceeds of sale that the Debtors are reinvesting in leased property should be entitled to the protection of paragraph 12-906.

Pursuant to 735 ILCS 5/12-901:

Every individual is entitled to an estate of homestead to the extent in value of \$7,500, in the farm or lot of land and buildings thereon, a condominium or in personal property, owned or rightly possessed by lease or otherwise and occupied by him or her as a residence, or in a cooperative that owns property that the individual uses as a residence; and such homestead, and all right and title therein, is exempt from attachment, judgment, levy or judgment sale for the payment of his or her debts or other purposes and from the laws of conveyance, descent and legacy, except as hereinafter provided or as provided in Section 20-6 of the Probate Act of 1975 as amended.

Under this Section, the Court finds that a leased premises may be occupied as a homestead. See: Maher v. Goff, 316 Ill. 605, 147 N.E. 427 (1925). Additionally, it has been found that a tenant holding a leasehold interest in a premises can claim the benefit of the homestead exemption under paragraph 12-901, formerly Chapter 52, para. 1, Ill. Rev. Stat., with the present wording under the statute being more liberal than that under former Chapter 52, para. 1. Although the fact situation before the Court is somewhat unusual, the Court finds that the Debtors have shown that the stream of payments from the sale of their former homestead is necessary for the payment of their present lease. As such, the Court finds that there is a direct link between the proceeds of the sale of the former homestead of the Debtors and the reinvestment of said proceeds in the present homestead of the Debtors, being leased premises in Westfield, Illinois. As such, the Court finds that the Debtors do fall within the parameters of 735 ILCS 5/12-906 in that they have shown that they are reinvesting the proceeds from the sale of their former homestead in a new homestead, and, as such, should be entitled to the same exemption as on the original homestead. The Court further finds that, had the Debtors not sold their home, they would be entitled to the homestead exemption under Illinois law. As such, the proceeds from the sale of that homestead are entitled to the same exemption.

In support of his argument, the Trustee has cited several cases wherein Courts have found that payments on a contract for deed should not be entitled to homestead exemption as proceeds where it is found that the stream of payments extends for more than one year past the actual sale date. In particular, the Trustee has cited In re Ehrich,

110 B.R. 424 (Bankr. D. Minn. 1990). In reading that case, the Court finds that it is distinguishable from the present instance not only upon the facts but in that the case applied Minnesota homestead exemption law, which is different from the law applicable in Illinois. As such, the Court does not find that the case of In re Ehrich is dispositive of the issues before the Court in the present case, and the Court chooses not to follow the logic of the Minnesota Court. Additionally, the Trustee has cited the case of In re Andes, 78 B.R. 968 (Bankr. W.D. Mo. 1987), in which that Court held that proceeds of the sale of a homestead would only be entitled to an exemption where it was shown that the debtor or debtors had reinvested the homestead proceeds within a reasonable time from the sale of their former homestead and that the exemption would no longer be available where it was found that the debtor had, for an unreasonable time, failed to invest the proceeds in another homestead. The Court finds that the facts in the Andes case are not the same as the facts in the present case in that the Court has found that by using the proceeds from the sale of their former homestead in paying for their present leasehold interest, the Debtors are, in fact, reinvesting the proceeds in a timely fashion so as to meet the requirements of 735 ILCS 5/12-906. Having found that the Debtors have come within the exemption allowable under paragraph 5/12-906, the Court finds that the Trustee's Objection to Claimed Exemption should be denied to the extent that the Debtors will be allowed an exemption in the amount of \$15,000 for proceeds received from sale of their former homestead in the State of Missouri.

ENTERED: February 16, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge